Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. .

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

JAMES L. MARTIN,

Petitioner,

v.

OMEGA MEDICAL CENTER ASSOCIATES, L.P. DELAWARE MEDICAL TIME SHARE DEVELOPMENT CORPORATION, BROCK J. VINTON, ROBERT G. ALTSCHULER, LOUIS D. CENTRELLA, MEDICAL TIME SHARE DEVELOPMENT CORPORATION, LOWELL S. WEIL, and JOEL M. CARLINS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES L. MARTIN
912 McCabe Avenue
Wilmington, DE 19802
(302) 652-3957
Petitioner: "In Pro Se"

47 LP

QUESTION PRESENTED

Should James L. Martin's IFP motion be granted to resolve an intercircuit conflict incident to his efforts to reopen a prolonged series of related cases for his clients and for himself, which he directed against judicial corruption in his home state of Pennsylvania and sought to resolve in surrounding states, in view of the principal federal trial judge having been an employee of the same law school defending in the related cases, with personal knowledge of adversary witnesses, who compounded and endorsed the judicial retaliation against James L. Martin for his litigation against them?

PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED, BUT NOT A PARTY HERE [Rule 14.1(b)]

None; however, Eric Copeland, Earl Erdman, and Victoria Erdman were parties before the District Court.

STATEMENT OF THIS COURT'S JURISDICTION

Date of entry of judgment sought to be reviewed: 5-3-93.

Date of order respecting a rehearing: 6-14-93, with an Order entered to dismiss the appeal on 6-29-93. An application to extend the time for filing a certiorari petition until 11-11-93 was granted on 8-24-93.

Statute to confer jurisdiction for review: 28 USC Sec. 1254 (1).

OPINIONS AND ORDERS IN THE COURTS BELOW

The 3rd Circuit denied my Rule 24(a) IFP Motion, and a Motion to Recuse, on 5-3-93, at A-1. My Petition for Rehearing *en banc* was denied on 6-14-93, at A-40. The Third Circuit dismissed the appeal for my inability to pay the appeal fee, at A-2, on 6-29-93.

The District Court denied my IFP Motion on 3-19-93, at A-3 to A-4. The federal court, on 9-30-93, issued another opinion and order to grant the respondents' Rule 11 motion against me, at A-5 to A-17. A Motion for Reargument is pending.

Matters resolved in my favor through the administrative process, which culminated in a final, unappealed decision in January 1986, remain unsettled because Delaware Federal District Judge Joseph

Farnan, appointed in 1985, worked for my principal adversary, the Delaware Law School. Earlier this year, when I learned about the direct nexus between Judge Farnan, who presided over all the cases I filed in Delaware's Federal District Court until his removal and disqualification in 1991 and the Delaware Law School, I filed motions to reopen some of the related cases. Judge Farnan denied the motions, and one such example is at A-18 to A-27. He had previously suggested, in a related case, that he had no extrajudicial nexus with my opposition, as noted on p.3 of a related opinion, at A-28. Related decisions in other jurisdictions on the same issues are also of dubious validity in view of a series of recusals. One example of a recusal particularly relevant to the case at bar is at A-26, A-29 to A-30,

because the Delaware district court relied upon judgments from recused New Jersey Federal District Judge Clarkson Fisher. Nearly all of the federal courts granted my IFP Motions dealing with the same, or similar, issues, illustrated at A-31 to A-39.

STATEMENT OF THIS COURT'S JURISDICTION

This Court's jurisdiction for review is at 28 USC Sec. 1254(1).

AUTHORITY RELIED UPON

28 USC Sec. 1915(a). Proceedings *in forma pauperis*

"(a) Any court of the United States may authorize the commencement...of any suit..., without prepayment of fees and costs or security therefore, by a person who makes an affidavit that he is unable

to pay such costs or give security therefor."

STATEMENT OF CASE

A. Basis for federal jurisdiction in the Court below: 15 USC Sec. 78aa, 18 USC Sec. 1964, 28 USC Secs. 1331(a), and 28 USC Secs. 2201 and 2202.

B. Statement of Case: Joseph J. Farnan, Jr., a Federal District Court Judge presiding in the District of DE, presided over this matter when I filed it in 1989 on behalf of a group of investors who were subjects of securities fraud. That initial case is before the Third Circuit again at No. 93-7405, because earlier this year, I learned that Judge Farnan was an employee of and taught at the Delaware Law School. The School purported to raise an issue concerning my remote medical history to enjoin me from continuing to practice law after I was sworn in before the bar. Judge Farnan denied any extrajudicial nexus with my principal adversary, the Delaware Law School. Because his now obvious conflict of interest resulted in clearly biased decisions against both my clients and me, I filed Motions to Reopen.

Eventually, Judge Farnan was removed, after having presided over all the cases I filed in the Delaware Federal District Court from his appointment in 1985 until his disqualification in 1991. I did not file any cases in Delaware prior to 1985. Now, all the decisions he entered against me should be reopened, because he clearly wrote that there was no "bias or prejudice" rooted in an "extrajudicial source." One

illustration of his denial of any extrajudicial nexus in in Judge Farnan's 6-3-91 Op. in *Martin v. Smith [Professor at Delaware Law School], et al.* No. 91-75, D.DE, at A-28, still pending in the Third Circuit. Judge Robinson, whose decisions are at issue here, accorded *res judicata* effect to decisions from Judge Farnan, despite his removal.

someof my fee waivers have been restored, and these restored fee-waiver cases include those identical to cases brought here and denied as frivolous and malicious. Because the DC Circuit is allowing me to proceed IFP there, and because the Third Circuit denied similar Motions here, a conflict between the Circuits is evident, and Rule 10.1(a) suggest intervention is appropriate to resolve intercircuit conflicts.

My prolonged series of lawsuits against the judiciary in PA for conspiracy to fix the outcome of cases, independent of either law or fact, was well-founded. In the past year, the regrettable reality of the legal system in PA, my home state, both the wellspring and the fountainhead of all this related litigation, has become public. A client with a vested, who have a vested interest in the resolution of this case, paid the filing fee for this petition, because I am not able to pay it in view of the long-term assault on my standing in the legal community emanating from the PA Supreme Court and from another institution, the Delaware Law School.

REASONS FOR GRANTING THIS WRIT

This petition should be granted to resolve the intercircuit conflict about whether fee waivers should be granted for cases, like this one, where a mendacious judge undermined a final administrative order in my favor to assist other corrupt judges, some since removed, to take my law licenses without notice, hearing, or cause. An IFP Motion should be granted if the questions presented involve legal issues arguable on their merits and therefore not frivolous. *Jones v. Frank* 622 F. Supp. 1119 (DC Tex 1985), 28 USC Sec. 1915, and F.R.A.P. 24(a). Even recused Judge Clarkson Fisher so ruled on 12-5-88.

See Judge Fisher's Opinion from the related case, *Martin v. Townsend*, et al., 875 F.2d 311, cert. den,, 110 S. Ct. 212 (1989), reh. den.

CONCLUSION

This Petition for a Writ of Certiorari should be granted to resolve the intercircuit conflict, so that the Third circuit is directed to reverse the denial of my Motion for Leave to Proceed *in forma pauperis*.

DATED: November 8, 1993

Respectfully submitted,

James L. Martin
912 McCabe Avenue
Wilmington, DE 19802
(302) 652-3957

FPS-4 April 22, 1993

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 93-7194

JAMES L. MARTIN, ET AL.

vs.

OMEGA MEDICAL ASSOCIATES

(D. Del. Civ. No. 91-00193)

Present: BECKER, MANSMANN, and NYGAARD, CIRCUIT JUDGES*

Submitted are:

(1) By the Clerk for possible dismissal due to a jurisdictional defect;

(2) Appellant's motion for leave to appeal in forma pauperis and affidavit in support thereof, pursuant to Rule 24, Federal Rules of Appellate Procedure;

(3) Appellant's motion to recuse in the above captioned case.

Respectfully,

[Signature]
Clerk

PDS/NEG/dmg
Enc.

ORDER

The foregoing motion for leave to proceed in forma pauperis is Denied.

* Judge Becker, Mansmann, and Nygaard decline to recuse.

By the Court,
[Signature]
Circuit Judge

Dated: May 3 19??
(initialed MA/CC-JLM, JSG,ESC,EE,VE)

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 93-7194

Copeland, et al.

vs.

Vinton, et al.

James L. Martin, Appellant

(Delaware District Civil No. 91-00193)

O R D E R

Pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Rule 28(1) of the United States Court of Appeals for the Third Circuit,

It is O R D E R E D that the above-entitled case is hereby dismissed for failure to timely prosecute,

It is FURTHER O R D E R E D that a certified copy of this order be issued forthwith as the mandate.

For the Court,

[Signature]
Clerk

Date: June 29, 1993

cc: Mr. James L. Martin
Jeffrey S. Goddess, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ERIC S. COPELAND, EARL ERDMAN, VICTORIA ERDMAN, and JAMES L. MARTIN,	)	
Plaintiffs	)	
v.	)	Civil Action No. 91-193 (SLR)
OMEGA MEDICAL CENTER ASSOCIATES, L.P., et al,	)	
Defendants.	)	

MEMORANDUM ORDER

Presently before this Court is plaintiffs' motion for leave to proceed in forma pauperis. (D.I. 72) "An appeal may not be taken if forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a). If a district court denies a motion to proceed on appeal in forma pauperis, it "shall state in writing the reasons for the denial." Fed. R. App. P. 24(a). For the following reasons, this Court denies plaintiffs' motion.

First, the Court finds that plaintiffs' motion fails to meet the standards of poverty as required by section 1915. Plaintiff Martin, in an attached affidavit, indicates that he is currently employed and that his monthly income consists of the following: "$264/mo., ave. net. ($1523/mo., ave. gross) Self-employed. Also, part-time volunteer

racquetball instructor, Central YMCA; Wilm., DE ($32/mo., classes/mo., 45 min. class)." (D.I.72) The other plaintiffs have not submitted any personal financial information. The Court is not satisfied with plaintiffs' assertions that they are unable to pay the costs for their appeal.

Second, even if plaintiffs were unable to pay the costs of appeal, the Court finds that the issues raised on appeal are frivolous and that the appeal can thus not be certified as being in good faith. the Court is satisfied that this case would be dismissed in the case of a nonindigent plaintiff. See Liles v. South Carolina Dep't of Corrections, 414 F.2d 612, 614 n.1 (4th Cir. 1969) (district court must show "not merely that the appeal lacks merit, but that the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant").

IT IS THEREFORE ORDERED in Wilmington this 19th day of March, 1993, that plaintiffs are hereby DENIED leave to proceed in forma pauperis on appeal. The clerk of the court is directed to transmit copies of this Memorandum Order to plaintiffs and defendants.

[Signature]
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ERIC S. COPELAND, EARL and VICTORIA ERDMAN, and JAMES L.MARTIN, Plaintiffs	)	
v.	)	Civil Action No. 91-193 SLR
OMEGA MEDICAL CENTER ASSOCIATES, L.P., et al, Defendants.	)	

Eric S. Copeland, Earl Erdman, Victoria Erdman and James L. Martin, plaintiffs, pro se.

Jeffrey S. Goddess, Esquire, of Rosenthal, Monhait, Gross & Goddess, P.A., Wilmington, Delaware; attorney for defendant Omega Medical Center Associates, L.P.

MEMORANDUM OPINION

Dated: September 30, 1993

Wilmington, Delaware

[Signature]
ROBINSON,
District Judge

I. INTRODUCTION

Before the court is defendant's, Omega Medical Center Associates, L.P. ("Omega), motion to issue sanctions under Federal Rule of Civil Procedure 11 against the plaintiffs, Eric S. Copeland ("Copeland"), Earl and Victoria Erdman ("Erdmans"), and James L. Martin ("Martin"). Specifically, the defendant request this Court to issue the somewhat unique sanction of enjoining Mr. Martin from filing future claims until the Court has had the opportunity to review the claims and determine if they have merit. (D.I. 69 at 10) Furthermore, defendant requests monetary sanctions against Dr. Copeland and verbal sanctions against the Erdmans. (Id.) For the reasons stated below, the motion of the defendant will be granted in part and denied in part.

II. BACKGROUND

On April 3, 1991 plaintiffs filed this action alleging two types of complaints. Both the first type, RICO and Securities Act violations, and the second type, First and Fourteenth Amendment violations, had been previously alleged in prior cases. Almost immediately, defendant moved for sanctions in accordance with Federal Rule of Civil

Procedure 11. (D.I. 3) On March 6, 1992, after a series of motions filed by Mr. Martin including, but not limited to, a cross motion for Rule 11 sanctions (in which he states he "...is not responsible for politically-oriented judges who wrest the spirit and ignore the letter of the law to sanctify a scoundrel's cause.")(D.I. 5 at 2), a motion to disqualify Saul, Ewing, Remick & Saul (in which he accused a senior partner in that firm of offering him a bribe) (D.I. 8), and three motions to disqualify three separate judges (in which he states "The Delaware Law School and those parties associated with it are treated as sacred cows..." and goes on to discuss the school's objection to his practice of law because of what he describes as a "remote medical history") (D.I. 9; 11; 32 at 2-3), the case was dismissed as to Omega on the basis of res judicata. (D.I. 34, 35)

The RICO and Securities Act claims had all been determined previously in *Bucher, et al v. Omega Medical Center Assoc., et al*, No. 89-317 (d. Del. Jan. 16, 1990), aff'd 90-3461 (3d. Cir. Dec. 11, 1990). The constitutional claims concerning Martin's removal as an attorney of record were previously litigated in *Martin v. Townsend*, 1990 U.S. Dist. LEXIS 12443 (D.N.J. 1990).

The decision to dismiss the case at bar as to defendant Omega was followed by one motion for reconsideration (D.I. 63) and

a motion to vacate 12 orders (D.I. 66). On appeal, the Third Circuit denied Martin's motion to proceed in forma pauperis and dismissed the plaintiff's appeal for failure to prosecute. *Copeland v. Omega Medical Ctr. Assoc., L.P.*, C.A. No. 93-7194 (3d Cir. May 3, 1993). (D.I. 75)

With the dismissal of the appeal,the defendant reasserts its motion for sanctions in accordance with Fed. R. Civ. P. 11. Omega argues that the plaintiffs filed this most recent complaint without reasonable inquiry, with the improper purpose of harassment, and that the filing is repetitive. (D.I. 3 AT 1,2)

III. DISCUSSION

A. Rule 11

Defendant requests Rule 11 sanctions against the plaintiffs in this matter for filing a frivolous claim. Rule 11 provides, in relevant part, as follows:

> The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper, that to the best of the signer's knowledge, information, and beliefs formed after reasonable inquiry it is well grounded in fact and **is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law,** and that it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Fed. R. Civ. P. 11 (emphasis added). In determining whether an attorney has violated the above provision of Rule 11, the Court must apply an objective standard. *Lieb v. Topstone*, 788 F. 2d 151 (3rd Cir. 1986); *Gaiardo v. Ethyl Corp.*, 835 F.2d 479 (3rd Cir. 1987); 95 A.L.R. Fed. 108, 123 (1989). Mr. Martin is not spared being held to this standard because he is not a licensed attorney. The same objective standard applies to non-attorneys who sign pleadings. Id.; see also Snyder v. I.R.S., 596 F. Supp. 240, 251 (N.D. Ind. 1984). While it is still an objective standard, we recognize that particular circumstances, such as whether or not a party is proceeding pro se, should be taken into account. Id. Notably, however this Court has determined that, although Martin is not a member of the bar, "a substantial part of his occupation involves prosecuting lawsuits." *Martin v. Smith*, CA No. 91-75 (D.Del. July 26, 1993). Taking into account Mr. Martin's pro se status, therefore, does not help him because he is trained in the law.

If a court determines a Rule 11 violation has occurred, then it **must** impose sanctions. Lieb, 788 F. 2d at 157.[1] To say that

[1] "If a pleading, motion or other paper is signed in violation of this rule, the court, **shall** impose upon the person who signed it...an appropriate sanction." Fed. R. Civ. P. 11

sanctions are mandatory, however, is not to say that the specific sanction to be imposed is mandated by Rule 11. Rather, "[t]he court...retains the necessary flexibility to deal appropriately with violations of the rule. It has the discretion to tailor sanctions to the particular facts of the case..." Fed. R. Civ. P. 11 Advisory Committee's Note. "District courts have wide discretion to select the type of sanction to be imposed. Rule authorizes the imposition of an 'appropriate sanction' which courts have held may include...various forms of attorney discipline ranging from verbal reprimands to disbarment, or enjoining or otherwise restricting the filing of future litigation." 95 A.L.R. Fed. 108, 113 (1989); See also *Lieb*, 788 F.2d at 157 ("The tone of the rule makes clear that, although trial judges still retain substantial discretion, its exercise is now directed more toward the nature and extent of the sanction rather than its imposition.").

The defendant in this case specifically requests different sanctions for each plaintiff. The defendant seeks to have Mr. Martin enjoined from filing further complaints without the Court's prior approval. (D.I. 69 at 9, 10)[2] [.] When imposing such a sanction, a

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[2] While this remedy is usually ordered under the All Writs Act, 28 U.S.C. §1651 (1982), district courts have the power to issue such a sanction under Rule 11 as well. See e.g., *Chipps v. U.S.D.C. for M.D. of Pa*, 882 F.2d 72 (3rd Cir. 1989); *Gagliardi v. McWilliams*, 834 F. 2d. 81 (3rd Cir. 1987). "The power to impose sanctions results from specific Congressional

court must give the affected party notice and an opportunity to be heard. *Gagliardi*, 834 F.2d at 83. Additionally, such an order must be "narrowly tailored" and limited to future lawsuits arising out of the same lawsuits currently at issue. *Chipps*, 882 F.2d at 73 (quoting *Gagliardi*, 834 F.2d at 83.)

B. Martin's Actions

In 1989 plaintiffs Copeland, Erdman and others commenced a suit in this court against, among others, defendant alleging that it had violated both RICO and Securities laws. During the case, the plaintiff's attorney, James Martin, was removed from the case upon a finding that his admission to the United States District Court for the District of New Jersey was void. The Court dismissed the case with prejudice. *Bucher v. Omega Medical Center Assoc.*, No. 89-417 (D.Del. Jan 16, 1990), aff'd No. 90-3461 (3rd Cir. Dec. 11, 1990).

In 1991 the plaintiffs filed this claim. In this action, and many others filed by Martin, he designated himself as a plaintiff and proceeded pro se, thus skirting around the designation of his professional status as an attorney unable to practice law as a licensed

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grants and from court rules. Representative citations include...Fed. R. Civ. P. 11." *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 360 n.1 (5th Cir. 1986).

member of any bar.

This Court dismissed the case at bar primarily because the plaintiffs were merely engaging in a blatant attempt to relitigate by reference the issues dismissed in *Bucher and Martin v. Townsend*. (D.I. 35 at 5). This was not a case in which there was some confusion as to the applicability of res judicata and collateral estoppel. Rather, it was a textbook case of res judicata by raising the same claims by the same plaintiffs against the same defendants. The only new claim against Omega concerned the removal of Mr. Martin as attorney of record for the plaintiffs, a claim already litigated in *Martin v. Townsend*. Thus, every argument of the plaintiffs was one that had already been determined, one upon which a final judgement had been rendered, and one upon which an appeal had already been lost or dismissed.

Filing claims which have no legal merit due to res judicata is not new to Mr. Martin. See *Martin v. Sparks*, No 90-235 (D.Del Aug. 16, 1991) aff'd 961 F.2d 1568 (3rd. Cir 1992). Indeed, Mr. Martin has been sanctioned before for similar behavior. *Richards et al v. the Medical Center of DE, Inc.*, C.A. No. 91-148 (D.Del Aug 6, 1992). While one would think that these experiences would make him keenly aware of the parameters of res judicata, they seem to have been to no avail.

BEST AVAILA

Applying the objective standard to the case at issue, Mr. Martin's behavior falls squarely within that which Rule 11 was intended to limit. "Rule 11...is intended to discourage pleadings that are 'frivolous, legally unreasonable...even though the paper was not filed in subjective bad faith." *Lieb*, 788 F. 2d at 157 (quoting *Zaldivar v. City of Los Angeles*, 780 F. 3d. 823, 831 (9th Cir. 1986)). When Mr. Martin filed this cause of action, no reasonable person could have concluded that it was well grounded in the law because the issues had already been litigated and determined by a court of law and affirmed on appeal. The purpose, then, of his actions could only have been to harass the defendant or force it to incur substantial legal costs.

C. Appropriate Sanction

Mr. Martin's conduct warrants sanctions. "[F]iling meritless, repetitive actions ties up the court's limited resources 'to the detriment of other litigants.'" *Gambress v. Hess*, 777 F. Supp. 375, 383 (D.N.J. 1991), aff'd without op, 970 F. 2d 898, cert. den., 113 S. Ct 61 (1992). This Court has the authority to award the sanctions requested by the defendant, namely to issue an injunction against Martin's further filing of papers in regard to this transaction. E.G., *Gambrell*, 777 F. Supp. at

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384; *Chipps*, 882 F. 2d at 73.[3] However, such sanctions "are extreme remedies and should be narrowly tailored and sparingly used." *In re Packer Ave. Assoc.*, 884 F.2d 745, 747 (3rd. Cir 1989).

In the cases in this circuit where such an injunction has been imposed, two common threads have existed. In each, the guilty party expressed an intent to continue the vexatious litigation. *Gambrell*, 777 F. Supp at 384; *Chipps*, 882 F. 2d at 73. Additionally, cases that warrant such a sanction are usually ones in which the plaintiff has filed more than four or five repetitive cases. *In re Packer Ave*, 884 F.2d at 747 (appellant tried to file twenty-seven petitions "relitigating the same

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[3] Although Mr. Martin can no longer proceed in forma pauperis, such sanctions still apply. *Chipps*, 882 F. 2d at 73; *In Re Green*, 598 F. 2d 1126 (8th Cir. 1979).

issues that had already been decided by the court."); In re *Oliver*, 682 F.2d 443 (3rd Cir. 1982) (appellant filed 51 cases and 24 appeals). While the Court finds that Mr. Martin has filed "groundless, vexatious, repetitive, or harassing claims," there is no evidence that he has the intent to continue along this course of conduct. Furthermore, although he has filed his share of meritless claims, he has not quite reached the level of most plaintiffs who are subjected to such a sanction. See *Hilgeford v. Peoples Bank, Inc.*, 652 F. Supp 230 (N.D. Ind. 1986); *Gambrell*, 777 F. Supp at 383 (quoting *Abdul Akbar v. Watson*, 901 F. 2d 329, 332 (3rd Cir. 1990). Therefore, the Court declines to impose an injunctive sanction.

This Court, then is left with the options of imposing monetary sanctions or issuing a public reprimand. Mr. Martin has been given monetary sanctions before by this Court. *Richards v. Medical Ctr. of Delaware*, C.A. No. 19-148 (D. Del. August 6, 1992). The utility of giving such sanctions again, as well as Mr. Martin's ability to pay, is questionable. Therefore, the Court, by this memorandum order, issues a public reprimand for Martin's harassing and vexatious conduct in the pursuit of claims which had previously been dismissed **with prejudice**. To have said that the Court was hesitant to conclude that Martin had developed a pattern of vexatious claims is not to say

that he has twenty more chances before a pattern can be found. To the contrary, a continuation of such harassing behavior following this memorandum order can only be regarded as the same type of behavior found in *Gambrell* and *Chipps* which warranted an injunctive sanction.

D. The Other Plaintiffs' Actions

As to the other plaintiffs, the Court finds that sanctions are inappropriate at this time.

CONCLUSION

For the reasons stated, defendant's motion for Rule 11 sanctions is granted in part and denied in part. An Order consistent with this Memorandum Opinion shall issue.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ERIC S. COPELAND, EARL ERDMAN, VICTORIA ERDMAN, and JAMES L. MARTIN, Plaintiffs	)	
v.	)	Civil Action No. 91-193 (SLR)
OMEGA MEDICAL CENTER ASSOCIATES, L.P., et al, Defendants.	)	

ORDER

At Wilmington, this 30th day of September 1993, having reviewed the motion of the defendants and having concluded that the filing by plaintiff James L. Martin of this action violated Fed. R. Civ. P. 11;

IT IS ORDERED, pursuant to Fed. R. Civ. P. 11, that

1) Defendant's motion for sanctions as to plaintiff Martin is granted.

2) Defendant's motion for such sanctions as to the other plaintiffs is denied.

[Signature]

United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 85-53-JJF
	)	
DELAWARE LAW SCHOOL, et al.,	)	
	)	
	)	
Defendants.	)	

James L. Martin. Pro Se Plaintiff.

Somers S. Price, of POTTER ANDERSON & CORROON, Wilmington, Delaware.
Attorney for Defendant Delaware Law School.

Stuart B. Young, of YOUNG CONAWAY STARGATT & TAYLOR, Wilmington, Delaware. Attorney for Defendants Lebanon Valley College, Legal Services Association, John E. Feather, Jr. and James T. Reilly.

MEMORANDUM OPINION

May 6, 1993

Wilmington, Delaware

[Signature]
FARNAN,
District Judge

The Court has before it James L. Martin's ("Martin") Motion to Re-open pursuant Rule 60(b)(4) of the Federal Rules of Civil Procedure. For the reasons stated below Martin's Motion to Re-Open will be denied.

I. Background

Martin seeks to reopen four cases that were previously closed by the Court. [4] In each case, martin alleges that the case should be reopened pursuant to Rule 60(b) (4) of the Federal Rules of Civil Procedure which provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment,order, or proceeding for the following reasons: . . .
> (4) the judgment is void;. . .

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[4] Martin filed identical motions in the following civil actions: *Martin v. Delaware Law School, et al.*, Civil Action No. 85-53-JJF; *Martin v. Delaware Law School, et al.*, Civil Action No. 88-298-JJF; *Bucher v. Omega Medical Center Associates, L.P., et. al.*, Civil Action No. 89-317-JJF; and *Richards v. Medical Center of Delaware*, Civil Action No. 89-374-JJF. On February 5, 1993 the Court denied the motion filed in *Bucher v. Omega medical Center Associates, L.P., et. al.*, Civil Action No. 89-317-JJF as being without merit and irrelevant to the issues of the case. Thus, there remain pending motions in three closed civil actions. *Martin v. Delaware Law School, et. al.*, No. 85-53 (JJF).

Fed. R. Civ. P. 60(b).

According to Martin, I should have recused myself from each of the four cases and my failure to do so renders the judgments void. (Civil Action No. 85-53-JJF, Docket Item 168).

Each case was dismissed prior to trial and each was appealed to the Court of Appeals for the Third Circuit where the decisions were affirmed.[5]

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[5] In *Martin v. Delaware Law School, et. al.*, Civil Action No. 85-53-JJF, the action was dismissed on October 17, 1986. On November 12, 1986, martin's Motion for Reargument was denied. A further motion to move the case forward was denied on June 22, 1988. An Order entered on July 15, 1988, made it clear that the action was dismissed with prejudice. The Court of Appeals for the Third Circuit affirmed by Order dated September 21, 1989.

In *Martin v. Delaware Law School, et. al.*, Civil Action No. 88-298-JJF, a Final Order granting defendants Motion to Dismiss was entered on December 14, 1990. Martin's Motion for Reargument was denied on January 2, 1991. Martin filed a Notice of Appeal on January 4, 1991, and on August 5, 1991, the Court of Appeals for the Third Circuit affirmed. Martin, on August 6, 1991, filed a Petition for Writ of Certiorari in the United States Supreme Court.
It was denied.

In *Bucher v. Omega Medical Center Associates, L.P., et al.*, Civil Action No. 89-317-JJF, a Final Order dismissing the action with prejudice was entered on June 21, 1990. On June 22, 1990, the Court denied martin's Motion for Reargument on an earlier entered order. Notice of Appeal was filed July 11, 1990, and the Court of Appeals for the Third Circuit affirmed on December 14, 1990.

Finally, in *Richards v. Medical Center of Delaware*, Civil Action No. 89-374-JJF, a Final Order dismissing the action with prejudice was entered on January 16, 1990. On January 29, 1990, Martin filed a Motion for Reargument. On June 21, 1990, the Court denied Martin's Motion for Reargument and Martin filed a Notice of Appeal on July 23, 1990. On October 22, 1990, the Court of Appeals for the Third Circuit affirmed.

II. STANDARD UNDER RULE 60(B)(4)

A Rule 60(b) motion must be brought within a reasonable time, subject to a maximum time of one year after judgment is entered alleging grounds as cited in sections (1) through (3), or within a reasonable time, if made pursuant to sections (4) through (6). See, Fed. R. Civ. P. 60(b). The Court will assume, without deciding, that Martin has filed these motions within a reasonable time.

A motion pursuant to Rule 60 (b)(4) is to be granted only in exceptional circumstances not merely when an error in judgment has occurred.[6] In order to show that a judgment is void on the grounds that a judge should have recused himself, one must show that the litigant's fundamental due process rights were denied in that the litigant was treated unfairly. *Margoles v. Johns*, 660 F.2d 291, 295 (7th Cir.

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[6] I rely here on the rulings of the Court of Appeals for the Seventh Circuit which analyzed the issue now before the Court. The Court of Appeals for the Third Circuit has not ruled directly on this issue and, when confronted with Rule 60 (b)(4) motions has held that setting aside a judgment is only proper when jurisdiction is lacking. See, *Page v. Schweiker*, 786 F.2d 150, 159-160 (3d Cir. 1986) (Garth, concurring); *Marshall v. Board of Education*, 575 F. 2d 417, 420-421 (3d Cir. 1978). Under the circumstances of the challenge present, I find the more expansive grounds for setting aside a judgment appropriate.

1981), cert. denied 102 S. Ct. 1256 (1982).[7]

As set out in *Margoles*, it is not enough that a litigant attempting to collaterally attack a judgment under Rule 60(b)(4) show that there is some question as to whether a judge should have recused himself. The litigant must demonstrate that the judge "in fact was so biased or prejudiced against plaintiff that the proceeding was unfair." Id. at 296. Further, after establishing prejudice, the litigant must also "overcome the subsequent affirmation by the [Circuit Court] of the dismissal order upon which the challenged judgment is based." Thus, the burden is greater in attempting to set aside a judgment under Rule 60(b)(4) for failure to recuse than it is if simply seeking recusal under

---

[7] As stated in *Margoles*:

> A judgment is not void merely because it is or may be erroneous. (citations omitted). For a judgment to be void under Rule 60 (b)(4), it must be determined that the rendering court was powerless to enter it. If found at all, voidness usually arises for lack of subject matter jurisdiction or jurisdiction over the parties. It may also arise if the court's action involves a plain usurpation of power or if the court has acted in a manner inconsistent with due process of law. In the interest of finality, the concept of setting aside a judgment on voidness grounds is narrowly restrict. Id., quoting *V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224-225) (10th Cir. 1979).
>
> The showing that must be made to attack this judgment is plain: "A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction... or if it acted in a manner inconsistent with due process of law."
>
> Id., quoting C. Wright and A. Miller, Federal Practice and Procedure, § 2862, pp. 198-200.

28 U.S.C.§455.[8] Id.

It should be noted that the only case cited by Martin in his several Memoranda in support of his motions is *Collins v. Walden*, 613 F. Supp. 1306 (D.C. Ga. 1985) fails to support his position. (See, Civil Action No 85-53, Docket Item 168, p. 10).

[8] The Court in *Margoles*, in distinguishing the burdens, stated:

> A litigant is denied the fundamental fairness to which he is constitutionally entitled if the judge of his case is unfairly biased against him. However, a litigant is not denied due process by either the "appearance" of partiality or by circumstances which might lead one to speculate as to a judge's impartiality. A litigant is denied due process if he is in fact treated unfairly.

Id. at 296.

Collins was not a motion filed pursuant to Rule 60 (b)(4), rather it was an action by a state prisoner challenging prior state court rulings pursuant to 42 U.S.C.§1983. As such, the district court was reviewing the state court rulings and, in so doing, was applying state law. Id. at 1313.

III. DISCUSSION

As grounds for his contention that I should have recused myself in the four cases cited, Martin asserts that I taught at The Delaware Law School, a defendant in Martin's lawsuits. Martin concludes:

> Now that the recently disclosed evidence proves that his former employer was also the primary defendant, and the Law School Dean "involved" here was also his former supervisor, whose credibility would have been at issue if this case had been properly handled (according to the record complied by the OCR's investigation), the judgments in question are void.

Id.

There is no basis to conclude that my "impartiality might reasonably be questioned." 42 U.S.C. §455 (Supp. 1992); See *Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1356 (3d Cir. 1990); *United States v. Agnes*, 1992 WESTLAW 122855 (E.D. Pa. May, 28, 1992).

Martin claims he became aware of my teaching at The Delaware Law School while reading old copies of the Delaware Law

Forum, The Delaware Law School newspaper. The article read by Martin discussed the hiring of several new faculty members who would be teaching courses at the Law School. On the basis of the article, Martin asserts that because of my "full time" employment and "supervision" by the then Dean of the Law School, I should have recused myself. These assertions by Martin ignore the fact that Martin was not enrolled at the Law School at this time and did not even apply to the Law School until 1979.

By way of clarification, it should be understood that I was never a full-time employee of The Delaware Law School, nor supervised directly by the Dean. I was contacted by the Law School regarding my availability to teach a single class at least several years before Martin applied to Delaware Law School in 1979. I was told by the caller that a full-time faculty member assigned to teach the class had suffered a fatal heart attack during a semester break and the Law School needed a substitute teacher. From 1970 to 1973, I was employed teaching political science and law-related courses full-time at undergraduate institutions in Delaware and New Jersey. Upon hearing of the emergency at the Delaware Law School, I agreed to help out and teach the class. That class was the only one I taught at The Delaware

Law School. At all times prior to, during and after teaching the class I was otherwise full-time employed. Since the completion of my work with regard to the class, I have had no other relationship of any nature with The Delaware Law School or any of its Deans.

On this record, I conclude that the grounds asserted by Martin do not support my recusal under Section 455. Likewise, I conclude the asserted grounds do not support declaring the prior judgments void under Rule 60(b)(4).

IV. CONCLUSION

For the reasons discussed, Martin's Motion to Re-Open will be denied in each case where such a Motion has been filed.

Appropriate Orders will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 85-53-JJF
	)	
DELAWARE LAW SCHOOL, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER

At Wilmington this 6 day of May, 1993, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that Plaintiff's Motion to Re-Open is DENIED.

[Signature]

United States District Judge

proceeding in which his impartiality might reasonably be questioned.

Title 28 U.S.C. §455 (a) (1982). Sections 144 and 455 are to be construed in pari materia. *United States v. Story*, 716 F. 2d 1088, 1091 (3d Cir. 1983). Both the United States Supreme Court and the Court of Appeals for the Third Circuit have stated unequivocally that a recusal motion based on bias or prejudice must point to a bias or prejudice that stems from an extrajudicial source. See *Berger v. United States*, 255 u.s. 22, 31 (1921); *United States v. Sciarra*, 851 F. 2d 621, 634-35 n. 28 (3d Cir. 1988); *United States v. Rosenberg*, 806 F.2d 1169, 1173 (3d Cir. 1986). All plaintiff's substantive allegations in his motion for recusal and disqualification deal specifically with this Court's decisions in prior cases filed by Martin and/or others (i.e., Richards and Bucher).[9] Plaintiff's motion does not demonstrate that this Court is biased against plaintiff or biased in favor of

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[9] *Bucher, et al. v. Omega Medical Center Associates, et al.*, District of Delaware, C.A. No. 89-317 JJF (Memorandum Opinion dated 12/14/89 denying plaintiffs' motion for recusal or disqualification); *Richards v. Medical Center of Delaware, Inc. et al.*, District of Delaware, C.A. No. 89-374-JJF (Memorandum Opinion dated 12/14/89 denying plaintiff's motion for recusal or disqualification); *Martin v. Delaware Law School of Widener University, Inc., et al.*, District of Delaware, C.A. No. 88-298-JJF (Memorandum Opinion dated 1/24/90 denying plaintiff's applications for recusal); *Martin v. Delaware Law School of Widener University, Inc., et al.*, District of Delaware, C.A. No. 88-298-JJF (Memorandum Opinion dated 2/12/90 denying plaintiff's motion for reargument of the Court's 1/25/90 Order which denied recusal motions filed by plaintiff).

Martin v. Smith, et. al., No. 91-75(JJF), D.DE.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
UNITED STATES DISTRICT COURT

JAMES L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 91-3206 (CSF)
	)	
JOHN J. FRANCIS, JR., et al.,	)	
	)	ORDER OF RECUSAL
Defendants.	)	

It appearing that plaintiff herein, James L. Martin, filed a petition for a writ of mandamus with the United States Court of Appeals for the Third Circuit seeking my recusal from hearing the matter entitled *Martin v. Knox*, Civil Action No. 91-1145, and related cases and all cases related to *Martin v. Townsend, et al.*, Civil Action No. 90-2616, aff'd, No. 88-5862 (3d Cir. April 20, 1989), which petition was denied by the court of appeals on September 6, 1991; and having, in my discretion, determined that my impartiality might reasonably be questioned because I was named nominal respondent in the mandamus petition, see 28 U.S.C. § 455; and good cause appearing,

IT IS on this 16th day of September, 1991,

ORDERED that I hereby recuse myself from hearing the within matter; and it is further

ORDERED that the Clerk submit the within matter to the Chief Judge for reassignment.

[Signature]
CLARKSON S. FISHER
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	Mo. 88-2300
PHARES WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

HUYETT, J. April 26, 1993

Upon consideration of plaintiffs' motion to proceed in forma pauperis on appeal and it appearing that plaintiff is unable to prepay the costs and fees of appeal, IT IS ORDERED THAT leave to proceed in forma pauperis is GRANTED.

[Signature]

Daniel H. Huyett, 3rd. Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN, Plaintiff,	)	
v.	)	Civil Action No. 85-53-JJF
DELAWARE LAW SCHOOL, et al., Defendants.	)	

ORDER

WHEREAS, Plaintiff filed a Motion to Proceed In Forma Pauperis On Appeal (D.I. 1789);

WHEREAS, it appears that Plaintiff is unable to prepay the costs and fees of appeal;

WHEREAS, by Order dated April 26, 1993, the Honorable Daniel H. Huyett, 3rd, of the United States District Court for the Eastern District of Pennsylvania, granted a similar motion;

IT IS HEREBY ORDERED this 25 day of May, 1993, that Plaintiff's Motion to Proceed In Forma pauperis On Appeal is GRANTED.

[Signature]
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN, Plaintiff,	)	
v.	)	Civil Action No. 88-298-JJF
DELAWARE LAW SCHOOL, OF WIDENER UNIVERSITY, Defendant.	)	

ORDER

WHEREAS, Plaintiff filed a Motion to Proceed In Forma Pauperis On Appeal (D.I. 69);

WHEREAS, it appears that Plaintiff is unable to prepay the costs and fees of appeal;

WHEREAS, by Order dated April 26, 1993, the Honorable Daniel H. Huyett, 3rd, of the United States District Court for the Eastern District of Pennsylvania, granted a similar motion;

IT IS HEREBY ORDERED this 25 day of May, 1993, that Plaintiff's Motion to Proceed In Forma pauperis On Appeal is GRANTED.

[Signature]
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 88-3420
DELAWARE LAW SCHOOL, et al.,	)	
	)	
Defendants.	)	

ORDER

HUYETT, J. June 21, 1993

Upon consideration of plaintiffs' motion to proceed in forma pauperis on appeal and it appearing that plaintiff is unable to prepay the costs and fees of appeal, IT IS ORDERED THAT leave to proceed in forma pauperis is GRANTED.

[Signature]

Daniel H. Huyett, 3rd. Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES L. MARTIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action
	)	No. 90-2752
JOHN D. WALMER, et al.,	)	
	)	
Defendants.	)	

ORDER

HUYETT, J. June 21, 1993

Upon consideration of plaintiffs' motion to proceed in forma pauperis on appeal and it appearing that plaintiff is unable to prepay the costs and fees of appeal, IT IS ORDERED THAT leave to proceed in forma pauperis is GRANTED.

[Signature]

Daniel H. Huyett, 3rd. Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES L. MARTIN,	)	CIVIL ACTION
	)	
Plaintiff,	)	
	)	
v.	)	
	)	No. 90-235 DHH
GILCHRIST SPARKS, et al.,	)	
	)	
Defendants.	)	

ORDER

HUYETT, J. June 21, 1993

Upon consideration of Plaintiffs' motion for leave to proceed in forma pauperis on appeal, his affidavit in support thereof, and pursuant to 28 U.S.C. § 1915, Plaintiff's motion is GRANTED. Let Plaintiff proceed on appeal without prepayment of costs or fees or the necessity of giving security therefor.

IT IS SO ORDERED.

[Signature]

Daniel H. Huyett, 3rd. Judge
Sitting by Designation

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

James L. Martin, plaintiff : Civil Action No. 88-0768-LFO

v. : Jury Trial Demanded

Delaware Law School of Widener University, et. al., defendants

Motion for Leave to Proceed IFP, with proposed Order

I, James L. Martin, move for leave to proceed on appeal in this matter *in forma pauperis*, without prepayment of costs and fees. I was previously granted leave to proceed IFP by order dated 2-8-89. My Verified Statement in support of this Motion is attached as Ex-1. I have recently been granted leave to so proceed in three (3) related cases, where the same or similar issues are on appeal. See Ex-2-to 4.

The issues to be raised on appeal are:

a. Should a Rule 60(b)(4) Motion to Reopen be granted in a case where *res judicata* effect was accorded to a final decision from a federal trial judge, who was employed by, and paid by, the principal defendant during the same period the cause of action arose, who was interviewed by, and hired by, the person who would have been a key witness if the case had been tried, and who claimed a final, unappealed decision from an administrative agency,

issued against the judge's former employer, could be "ignored" after the appeal period expired for the administrative order?

b. Should a Rule 60(b)(4) Motion to Reopen be granted in a case where the errant judge had no *in personam* jurisdiction over a party?

c. Should a Rule 60(b)(4) Motion to Reopen be granted in a case where a substantial part of a decision is based on disinformation from the PA Supreme Court, now under criminal investigation for disposing of cases without regard to either law or facts, just like the injured party alleged and proved?

d. Should Rule 11 sanctions be imposed against an attorney who argues that a federal trial judge (who had himself previously written that there was no extrajudicial nexus between himself and the defendant School) was not ever employed by the principal defendant, in spite of clear, unambiguous evidence to document such employment?

I am entitled to the relief sought on appeal, especially in view of the persistent and prolonged bad-faith pleading form these defendants on such simple, but decisive, issues as whether the DE trial judge worked at the same school that is a defendant here, during the same time the action arose. Moreover, the interim demise of the PA Supreme Court, where the disinformation scheme, under the guise of

absolute judicial immunity, was compounded and endorsed.

WHEREFORE, I request that this IFP Motion be granted.

BY: [Signature]

James L. Martin; 912 McCabe Ave.; Wilmington, DE 19802 (302)652-3957

ORDER

THIS 25th day of June 1993, the petitioner's IFP Motion is granted.

[Signature]

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May 19, 1993
(See FPS-4)

No. 93-7194

ERIC S. COPELAND; et al
v.
BROCK J. FINTON; et al
James L. Martin, Appellant
(Delaware D.C. Civil No. 91-00193)

Present: BECKER, MANSMANN and NYGAARD,
Circuit Judges.

Petition by Appellant pro se for Panel Rehearing and for Rehearing
en Banc of the 5/3/93 order, which the Court may wish to **Treat As** a Motion for Reconsideration of their 5/3/93 order which denied

In Forma Pauperis, with copy of 5/3/93 order, Sent for the Court's information is copy of Clerk's 5/3/93 letter advising appellant that the filing fees of $105.00 are due to be paid by 5/17/93.

[Signature]
Deputy Clerk 597-3137

O R D E R

The foregoing motion is denied.
Dated: June 14, 1993
(Initialed G.B.\cc. J.L.M.
J.G.G.)

By the Court,
[Signature]
Circuit Judge